MONTANA LEGISLATIVE HISTORY

Chapter 197 1991

Bill H _____ S 360 Original bill & history ✓C

H. Committee on Business & Ec Dev. S. Committee on Business & Industry

Hearing Date(s)			Hearing Date(s)		
3-14	✓	C	2-21	✓	C
_____		C	_____		C
_____		C	_____		C
_____		C	_____		C
Date Out _____		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 360

INTRODUCED BY Hager, Kennedy, Lewis, Tippett

BY REQUEST OF THE SENATE BUSINESS AND INDUSTRY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT THE LIABILITY OF PERSONS SERVING ON ACCOUNTING REVIEW BOARDS OR OF NONPROFIT CORPORATIONS PERFORMING THE FUNCTION OF ACCOUNTING REVIEW BOARDS; AND TO EXCLUDE FROM EVIDENCE THE PROCEEDINGS AND RECORDS OF ACCOUNTING REVIEW BOARDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Nonliability -- evidential privilege -- application to nonprofit corporations.** (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees

LC 2004/01

are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge; however, he may not be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 50, part 4, and the provisions of Title 37, chapter 50, part 4, apply to [section 1].

-End-

INTRODUCED BILL
SB 360

4/01	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/02	2ND READING PASSED	49	0
4/03	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
4/04	FIRST READING		
4/04	REFERRED TO TAXATION		
4/11	HEARING		
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/15	2ND READING CONCURRED	70	26
4/16	3RD READING CONCURRED	79	20
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS NOT CONCURRED	31	12
4/18	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE DISSOLVED		
4/22	FREE CONFERENCE COMMITTEE APPOINTED		
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	1
	HOUSE		
4/20	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE DISSOLVED		
4/22	FREE CONFERENCE COMMITTEE APPOINTED		
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	96	2
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPED	93	7
4/30	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 771	EFFECTIVE DATE: 5/15/91	

SB 360 INTRODUCED BY GAGE, ET AL.

CONFIDENTIALITY AND EVIDENTIAL PRIVILEGE FOR ACCOUNTING REVIEW BOARDS

BY REQUEST OF SENATE BUSINESS & INDUSTRY COMMITTEE

2/12	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
2/18	REREFERRED TO BUSINESS & INDUSTRY		
2/21	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/23	2ND READING PASSED	49	0
2/25	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/14	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	82	7
3/18	3RD READING CONCURRED	91	7
	RETURNED TO SENATE		
3/21	SIGNED BY PRESIDENT		
3/22	SIGNED BY SPEAKER		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 197	EFFECTIVE DATE: 10/01/91	

CHAIRMAN--BOB BACHINI
NORMAL SCHEDULE==> SITE: ROOM 312-3 DAYS: M,T,W,T,F TIME: 8:00 A.M.

SECRETARY-JO LAHTI

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0323	3/04	3/13		CONCUR		3/13
BECK, TOM			REVISING MOTOR VEHICLE DEALER LAW			
SB0330	3/04	3/19		CONCUR		3/20
MANNING, DICK			ALLOW BD OF HORSERACING EXEC SECY TO PRESCRIBE STATE STEWARD SALARY & DUTIES			
SB0335	3/04	3/14		CONCUR		3/14
NOBLE, JERRY			REVISE EXCAVATION PROCEDURES NEAR UNDERGROUND FACILITIES			
SB0360	3/04	3/14		CONCUR		3/14
GAGE, DEL			CONFIDENTIALITY AND EVIDENTIAL PRIVILEGE FOR ACCOUNTING REVIEW BOARDS			
SB0363	3/04	3/19		CONCUR		3/20
MANNING, DICK			REVISE SIMULCAST RACES AND EXOTIC WAGERING WITHHOLDING			
SB0369	3/18	3/22		TABLED ON 03/22		
JACOBSON, JUDY			PROHIBIT SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS			
SB0394	3/04	3/15		CONCUR AS AMENDED		3/21
SVRCEK, PAUL			REGULATE CONDUCT OF UTILIZATION REVIEWS BY HEALTH INSURERS			
SB0424	3/04	3/15		CONCUR		3/15
HAGER, TOM			REVISE THE TERMS OF CONVERSION OF CERTAIN INSURANCE POLICIES			
SB0433	3/04	3/13		CONCUR		3/13
BECK, TOM			PROHIBIT COERCION OF CAR DEALERS TO FORCE THEM TO JOIN IN AD OR SALE PROGRAM			
SJ0008	2/05	2/08		CONCUR		2/08
BROWN, BOB			RESOLUTION TO CHARGE FDIC PREMIUMS ON DEPOSITS IN FOREIGN BRANCH OF US BANKS			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **REP. BOB BACHINI, CHAIRMAN,** on March 14, 1991, at 8:00 A.M.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: SB 360 and SB 335 were to be heard and Executive Action taken on SB 335, SB 360, SB 272

Motion: **REP. BACHINI** announced before the Committee hearing begins, we have a motion by one of our Committee members. He recognized **REP. JOHN SCOTT** who moved to have a Committee Bill drafted. There has been a lot of legislation concerning juveniles and juvenile treatment and detention. The biggest problem with the bills we have is the funding. He asked to introduce a committee bill to require a $100 yearly permit fee to be charged on coin-operated amusement games machines. He is talking about Pac Mans, pinballs, etc. This industry is virtually unregulated. There is a $200 permit fee on poker and keno plus 15% of their

here. He was asking the Committee for permission to have such a bill drafted. He expects to have to do a lot of home work. He would appreciate the opportunity to have such a bill drafted.

Vote: **REP. BACHINI asked for a voice vote; those in favor of the motion would say Aye. Opposed say No. Those voting No were REPS. PAVLOVICH, KNOX, BENEDICT, BARNETT, ELLIS, HANSON, WALLIN. REP. LARSON was absent. The vote was 7 Noes, 10 Ayes. The motion failed.**

HEARING ON SENATE BILL 360

Presentation and Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 5, Cut Bank, explained this bill was introduced at the request of the Senate Business and Industry Committee. It is an Act to limit the liability of persons serving on accounting review boards or of nonprofit corporations performing the function of accounting review boards; and to exclude from evidence the proceedings and records of accounting review boards. It is patterned after what is happening in the medical field with regard to review functions for doctors, and somewhat after what is happening in the legal field with regard to legal review on lawyers. It provides that a person serving on a review committee cannot be held liable by anyone for the action taken by that review committee. It also provides the information disclosed in those committee review hearings cannot be used, and the people in that committee cannot be forced to divulge the information. It does, however, say whatever information is disclosed at a review committee hearing that is generally available anyway, can be used. In pursuing action a person on that committee cannot be questioned with regard to comments or questions that were asked at the review hearing.

Proponents' Testimony:

David Johnson, CPA in Helena, represented the Montana Society of CPAs which has approximately 1200 members in the American Institute of CPAs which has approximately 300,000 members. They support this bill. It is functional within the peer review process. It ensures the reviewers and the firms being reviewed can carry on candid conversations about the relationship that is being evaluated, and that conversation is protected. He recommended the Committee support this bill.

Opponents' Testimony: None

Questions From Committee Members:

REP. CROMLEY asked him to please be more specific in the types of situations we are dealing with. **Mr. Johnson** answered since 1979 the CPA profession has had a voluntary peer review program. In 1987 that became mandatory for approximately 40,000 firms within

the United States. As part of that program, firms are required to have outside accountants come in, look at their practice, evaluate that practice and issue reports on deficiencies if they might exist within that practice, and as part of writing that report there are conversations that take place between the review team and the firm that are very candid and often critical. The point is to protect those conversations and work papers from the discovery process. If there is a failure within an account, an audit per se, those work papers are still available to be subpoenaed in a litigation hearing. The firm's work product per se is not protected, but the peer review product would be protected. There have been several situations in the East where attorneys have sought to obtain the work papers on these peer review engagements which are typically destroyed within a relatively short period of time. The American Institute has attempted to resist subpoenas of these work papers and to date they have been able to do that. The purpose of this bill is to protect this whole peer review process.

REP. CROMLEY asked if he knew of any other industries that enjoy this protection. He has been in situations where there has been discovery or attempted discovery of background in the insurance industry work products where there has been some sort of self-critical analysis in the past for which there was some reason to not disclose, but he has never come across the specific statute which would decree nondisclosure. Are there other industries that have a similar type of protection? **Mr. Johnson** said it is his understanding the medical profession has comparable peer review and comparable protection. He was not sure what the procedure within the bar is, but there probably is protection up to a certain point.

REP. STELLA JEAN HANSEN asked if this were just for non-profit corporations? **Mr. Johnson** said it is for the non-profit corporations and their agents that are conducting the reviews. Typically the reviews are conducted by other CPAs and that those review teams are either put together by the American Institute of CPAs, one firm reviewing another firm, or by a state society organized in a review team to have a firm reviewed.

REP. HANSEN asked if he was talking about non-profit nursing homes, and things like that? **Mr. Johnson** said No, they are talking about the Montana Society of CPAs, the American Institute of CPAs, and the reviews that they organize.

REP. KILPATRICK asked if this review would be held in secret, they would talk amongst themselves and nothing would come out except the results? **Mr. Johnson** explained there are two classes of reviews, one of which the report and a 'Letter of Comments' of the findings and the recommendations are placed in a public file and that file is available to the public by writing to New York to get the results of the report. That is what is called the peer review process. The newer process is the quality review process which is mandatory and has compelled about 34,000 firms to go

through this process. To get the profession to buy off on that, in part, the results of those reviews are not included in the public file. Again this does not protect the work product itself. If there is an audit failure, if there is economic damage to an individual or business, certainly the work papers of the firm can be obtained and used in litigation hearings. It is just this one relationship between an accountant and another accountant evaluating that accountant's practice and form of practice.

REP. KILPATRICK said to clarify. down the line somebody is going to say "they did this to me", and they are going to get half of them coming back next time objecting. Does your accountant group overall feel this is a good bill? **Mr. Johnson** advised he is **Chairman of the Montana Society of CPAs, he is one of the 21 members of the Peer Review Committee of the American Institute of CPAs.** He is familiar with what this process has evolved into. They feel this bill gives them the necessary protection of that one on one conversation talking to one another and being able to candidly criticize a practice. The accounting profession is one that has sought self regulation rather having the SEC and other governmental agencies involved in regulating the profession. These peer and quality reviews are an integral part of that self regulation.

REP. STEPPLER asked regarding the limit of the liability of the persons, does that mean whatever actions the group comes up with they are not liable for whatever they say or do? **Mr. Johnson** said it is his understanding in conducting the review a great deal of judgment is involved. Perhaps a reviewer might miss something that someplace down the line results in litigation against the firm. If a particular audit had a problem with it, that audit wasn't selected, and the party is damaged down the line, the attorney comes back, and firstly he tries to sue the firm, and secondly, he tries to sue the reviewer of the firm. Just by the size of these things, the scope of the reviews range from maybe 3% of the practice for a very, very large multinational firm maybe ten, fifteen, twenty percent of the practice for smaller firms, so it is a selection process, not everything is looked at in these reviews.

REP. STEPPLER asked about the actions they do know about? If they do make mistakes, would this still cover them as far as liability? **Mr. Johnson** answered the review team would communicate to the firm any deficiencies noted. At that time it is the firm that is responsible for taking corrective action on those deficiencies that are noted. This does not take the firm out of the litigation picture, so the firm is ultimately responsible for its actions.

REP. ELLIS said as he understood this legislation it is to protect the reviewers when they are going over various accounting practices to determine whether the public is well served by that particular firm or individual. Mr. Johnson said that is essentially correct.

Closing by Sponsor:

SEN. GAGE said this is a good consumer protection bill. With that assurance of protection those review team people are going to be much more thorough and willing to question their peers in that whole review process, whereas if this is all information that is available, they would be less apt to be as thorough in what they are doing, especially if there is liability involved even though they may be sincere in what they are doing. If they don't have protection of some kind, they may be less apt to do as thorough a job. **REP. BENEDICT** will carry SB 360 on the House floor.

HEARING ON SENATE BILL 335

Presentation and Opening Statement by Sponsor:

SEN. JERRY NOBLE, SD 21, Cascade and Lewis & Clark Counties, is carrying this bill on behalf of the Montana Contractors' Association. It is an Act revising excavation procedures near underground facilities; requiring that entities and persons that have the right to bury underground facilities be members of one-call notification centers; exempting public authorities from liability for improper or unauthorized installations made by others; and amending several sections. In the Senate Committee there were no opponents, it passed 100% on the Senate floor. It is a very good bill and a good safety issue. Montana currently has a law providing for notification to contractors and others of the existence of underground facilities, such as power, gas, water, communication lines, etc. However, the law does not provide for that information to be centrally available to all who might excavate. Most utilities in the State participate in a one-call system in which they are notified about the upcoming excavation near their lines. The utility then marks their line locations prior to excavation by the contractor allowing the work to proceed with safety and no damage to lines.

Not all utilities participate in this service where the contractor and the public have a major risk that someone may not have marked a line. At the very least tearing up utility lines is going to cost both the utility and contractor money, disrupt service and delay the project. At the extreme end striking a power line or natural gas line could kill or severely injure a worker and others. Such accidents have happened in Montana, one as recently as last year. The cost of participating in the one-call system is paid for by the participating utilities. This is a safety issue for all Montanans.

Proponents' Testimony:

Ken Dunham represented the Montana Contractors' Association. This bill is above and beyond a safety issue for Montanans. Most of us have assumed the one-call system was in place throughout the State and was working well, and it is. Where Montana's one-call

EXECUTIVE ACTION ON SENATE BILL 360

Motion: REP. WALLIN moved SB 360 BE CONCURRED IN.

Discussion:

REP. KILPATRICK does not like secret committees. This is only dealing with accounting but it is bothersome that these people can talk and say there is nobody in command, nobody knows what is going on, and there is no liability whatsoever. That should be a public record. He is not happy with it.

REP. BACHINI explained he understood it to be the conversation they have while discussing the review. **REP. KILPATRICK** agreed it did not have to be an open meeting, and it doesn't have to be open because it is not a government meeting. Everybody should be able to look at their procedure and report.

REP. SONNY HANSON said this is a peer review, it is a review that the accounting CPA organization, evidently it is a requirement on a federal level, but engineers requested this out of Washington, D.C. They have groups who come in and will review two or three or four of their projects on how you do it and what are you doing wrong. It is strictly an internal operation to improve what you do. He doesn't know if that is public, or whether the responses to it are. This is our method of how we operate our business, and how we can improve our business, not from the financial aspect but from the technical aspect. It has nothing to do with the actual meeting or taking care of accounting of one of your clients, it is strictly a peer review by those in the trade that come in and say, look at it this way. Engineering started this about five years ago, and there are groups going all over the United States. It is strictly confidential for what happens.

REP. CROMLEY said the way Section 1 stands there is no liability for those persons provided they act on a reasonable belief without malice. Subsection (2) says the proceedings of the review are not asdmissible as evidence in any proceeding. You could have a review and during the course of the review it is brought to the attention of the accounting firm being reviewed that there is some mistake. Assuming the accounting firm does nothing about that and later there is a loss to an investor or person using the accounting firm, the fact that this was brought to the accounting firm's attention could not be brought out, so he objects to Subsection (2).

Motion: REP. CROMLEY moved to amend SB 360 by striking Subsection (2) which is on Page 1, line 24 through Page 2, line 12.

Discussion:

REP. BENEDICT thought the next sentence took care of that. REP.

CROMLEY said he read that also, but he reads it to say the materials can still be produced. Say there is a loss and you can still produce the books, etc., but that goes on to say the reviewer on Page 2, line 9 'however, he may not be questioned about his testimony or the proceeding before the committee or about opinions or other proceedings before the committee or any member of the committee'. The fact that the mistake was brought to the attention of the accounting firm it seems that it cannot be brought out.

REP. BENEDICT reminded these are peer reviews, they aren't expert reviews, these aren't calling in some high authority to say this is the way it is. It is one person's opinion. All this bill does is to say if I offer my opinion, I am not going to be held liable.

REP. SONNY HANSON said the concept on the peer review is that they are doing a review to improve the operation of the accounting firm, usually at the request of the accounting firm that they come in and do this for. Whatever they find, they as individuals, should not be subject to go before a court in the discovery processes and say "I found this". They have the peer review to be our basis for evaluating that stuff. It is a form of improving the accounting ability of the CPA firm.

REP. ELLIS said it seems that this part **REP. CROMLEY** is objecting to would make it easier for the reviewing committee or both to get information as to how an accounting firm does its business. It does not make it available. The second sentence merely means we are not changing the availability of that information. If it is available now, it still will be and if it wasn't available before the mere fact they gave it to this forum so it could be judged, does not make it available. **REP. CROMLEY** said he is not familiar with accounting things. He is thinking in terms of the legal profession. They have had peer review for companies they represent and will occasionally send in a team to evaluate what they are doing in the case in terms of their billing to see what sort of job they are doing. It seems to him they will then have to evaluate a case and they indicate to them that they have neglected to include under the special Statute of Limitations on an action that happened more than three years ago. They call to this to their attention which is good. Section 1 indicates that in the course of their review they make mistakes but if they are reasonably correct it protects them. Section 2 says if my client were to sue me because we didn't have the Statute of Limitations problem, they didn't use the Statute of Limitations defense but the fact that it was called to his attention by the peer review should be held against them. Not only did he miss it, it was specifically called to his attention by the peer review and maybe at that point there was a chance to correct it, still that error was not corrected. The fact that it was called to his attention should be discoverable.

REP. **BARNETT** commented on the bill. In light of a teacher and

being in the profession goes along with the same pattern that **REP. SONNY HANSON** was referring to if my principal comes in and evaluates me and points out some things that need correcting then I think it is my responsibility to correct them, the same within the legal profession. The fact he doesn't correct them does not make him liable for pointing them out to me, but at the same time if it was something that took me to court, then I think he has an obligation to testify against me that he pointed this out and I didn't make the correction. This is not saying that, it is just saying he is not liable, but whether he wants to testify or not, he could still be free to do so. The same thing would be true in the legal profession. If someone pointed out that you were doing something wrong and you didn't correct it, to protect the legal profession I would testify against you in court. He didn't see any difficulty with this legislation.

REP. KILPATRICK said if you are pulled on the carpet by a principal or school board, you can have representation and you have somebody there with you and those records are filed and on form and you know what is going on and anything they say is in the record, that is the point he was trying to make. He still doesn't like the idea of keeping it quiet. If you actually have the person there and have the representation, fine. That is one thing.

REP. BACHINI said we are speaking to the amendment.

Motion/Vote: Amendment to strike Section 2 in its entirety. REPS. SHEILA RICE, KILPATRICK, McCULLOUCH, STELLA JEAN HANSEN, BACHINI, DOWELL, CROMLEY voted in favor of the Amendment. REPS. PAVLOVICH, KNOX, BENEDICT, LARSON, STEPPLER, BARNETT, ELLIS, WALLIN, SONNY HANSON, TUNBY - amendment failed 7 to 10. REP. SCOTT was absent.

REP. BACHINI said there will now be discussion on the bill.

REP. BARNETT commented when his principal comes in and evaluates his class he would hate to make that a public hearing because it is for his benefit and he is helping me in trying to point out some weaknesses and some strengths. In some areas there is the right of privacy and it is something the public should not have to know at this particular point if I am weak in my teaching profession. He is trying to help me. For that reason he would defend the secrecy or right of privacy.

REP. STELLA JEAN HANSEN asked if this protects the principal and not the teacher? It exempts him from that review, so we can't sue the accountant? **REP. CROMLEY** said this section just protects the reviewers but not the party being reviewed. **REP. HANSEN** said we are relieving from litigation that reviewer at the time of that review. **REP. CROMLEY** maintained Section 1 protects the reviewers, and he maintains Section 2 protects the persons that were

Motion/Vote: SB 360 BE CONCURRED IN. Motion carried. REPS. STELLA JEAN HANSEN, KILPATRICK, DOWELL, CROMLEY, BACHINI voted NO.

EXECUTIVE ACTION ON SB 272

REP. CROMLEY reported on the subcommittee on SB 272. REPS. NORM WALLIN and REP. SHEILA RICE were committee members.

REP. CROMLEY explained SB 272 sponsored by SEN. FARRELL defines industrial infrastructure and tends to tighten it up. The opponents and subcommittee people were generally inclined not to tighten it up too much, and felt the Act has been serving a good purpose; however, it was felt some sort of definitial type of action should be taken with regard to the industrial infrastructure. There is another section of the code 7-15-4283 which does say industrial infrastructure development project, which means a project undertaken within or for an industrial district that consists of any or all of the activities authorized by 7-15-4288 so that is on the amendment, and put in additional language attempting to itemize more than has been done in the past exactly what the terms infrastructure and industrial infrastructure are. We used particular language from SEN. FARRELL's bill but basically what this amendment does is strike the New Section in SB 272, and include the language from the bill which was in there, natural gas lines, sewer lines, electric lines, telecommunication lines, and put those all in the list but also left the original list intact. So the intent of this amendment is to clarify (rather than define in the title), and did not narrow the use of the tax increment financing projects but just perhaps clarified it somewhat by the language.

REP. SONNY HANSON asked why did you strike out 'public' buildings and 'other' public improvements? The infrastructure normally refers to public accommodations of one sort or another. REP. CROMLEY said it was felt public buildings somehow means a city hall and was too narrow in terms of exactly what a public building is. Sometimes these buildings can be leased and not operated by the city or county.

REP. RICE said there is an EPA program that allows industrial buildings to be constructed and leased to the industry, and that too narrow a definition of this would prevent a city from participating in that program.

REP. SONNY HANSON said public buildings are defined throughout the statutes and by the Attorney General who defines it as any building that has public funds involved. Most of the codes and through other areas define public buildings as those accessed by the public, in other words a movie theater could be a public building. There are many connotations. REP. CROMLEY was thinking in terms of construction of public buildings.

REP. STELLA JEAN HANSEN said she served on a tax increment

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.
SECRETARY-JOANN BIRD

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0337	2/09	2/21		ADVERSE RPT ADOPT		2/22
RYE, DAVID			FULLY INFORMED JURY			
SB0342	2/09	2/21		PASS AS AMENDED		2/23
PINSONEAULT, DICK			ALLOW PLAINTIFF LOCATION OF TRIAL WHEN DEFENDANTS ARE NOT STATE RESIDENTS			
SB0344	2/11	2/21		DO PASS		2/22
PINSONEAULT, DICK			USE OF DEADLY FORCE TO PREVENT SEXUAL INTERCOURSE WITHOUT CONSENT			
SB0349	2/12	2/20		DO PASS		2/20
HARP, JOHN			REGULATE ATTORNEY FEES IN WORKERS' COMPENSATION MATTERS			
SB0360	2/13					
GAGE, DEL			CONFIDENTIALITY AND EVIDENTIAL PRIVILEGE FOR ACCOUNTING REVIEW BOARDS			
SB0364	2/13	2/19		DO PASS		2/19
VAUGHN, ELEANOR			ALLOW VIDEOTAPED TESTIMONY OF VICTIM UNDER 16 YEARS OLD IN VIOLENT CRIMES			
SB0374	2/14	2/18		DO PASS		2/18
BROWN, BOB			ELIMINATING THE GAMING ADVISORY COUNCIL			
SB0378	2/14	2/18				
HARDING, ETHEL			PROHIBIT OTHER STATE FROM COLLECTING FOR TAX ON PENSION OR RETIREMENT PAY			
SB0388	2/14	2/22		DO PASS		2/23
VAN VALKENBURG, FRED			FIREARMS POLICY FOR PROBATION AND PAROLE OFFICERS			
SB0392	2/15	2/21		PASS AS AMENDED		2/23
KEATING, TOM			ALLOW PUBLIC ACCESS TO DEATH CERTIFICATES WHEN CONDUCTING A TITLE SEARCH			
SB0398	2/15	2/21		DO PASS		2/21

CHAIRMAN--J. D. LYNCH
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M,T,W,T,F TIME: 10:00 A.M.

SECRETARY-DARA ANDERSON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0316	2/08	2/22		TABLED ON 02/22		
BLAYLOCK, CHET			ADD PARTIAL HOSPITALIZATION BENEFITS TO MENTAL ILLNESS, ALCOHOL, DRUG POLICY			
SB0323	2/08	2/21		PASS AS AMENDED		2/21
BECK, TOM			REVISING MOTOR VEHICLE DEALER LAW			
SB0324	2/08	2/18		ADVERSE RPT ADOPT		2/22
WILLIAMS, BOB			PROHIBIT COLLISION DAMAGE WAIVERS IN AUTOMOBILE RENTAL AGREEMENTS			
SB0330	2/08	2/20		DO PASS		2/20
MANNING, DICK			ALLOW BD OF HORSERACING EXEC SECY TO PRESCRIBE STATE STEWARD SALARY & DUTIES			
SB0335	2/08	2/18		PASS AS AMENDED		2/18
NOBLE, JERRY			REVISE EXCAVATION PROCEDURES NEAR UNDERGROUND FACILITIES			
SB0360	2/18	2/21		DO PASS		2/21
GAGE, DEL			CONFIDENTIALITY AND EVIDENTIAL PRIVILEGE FOR ACCOUNTING REVIEW BOARDS			
SB0361	2/13	2/19		PASS AS AMENDED		2/21
THAYER, GENE			REVISE AIRPORT AUTHORITY ACT			
SB0363	2/13	2/20		PASS AS AMENDED		2/21
MANNING, DICK			REVISE SIMULCAST RACES AND EXOTIC WAGERING WITHHOLDING			
SB0366	2/13	2/19		PASS AS AMENDED		2/19
FRANKLIN, EVE			REQUIRE HEALTH INSURANCE COVERAGE FOR MAMMOGRAPHY EXAMINATIONS			
SB0380	2/14	2/21		ADVERSE RPT ADOPT		2/21
RYE, DAVID			REGULATION AND LICENSE FEES BE USED BY INSURANCE DEPARTMENT FOR OPERATIONS			
SB0387	2/14	2/21		PASS AS AMENDED		2/22
THAYER, GENE			REQUIRE LANDLORD PROVIDE TENANT WITH COPY OF LAWS PERTINENT TO SEC. DEPOSITS			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 21, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 380

Presentation and Opening Statement by Sponsor:

Senator Dave Rye, sponsor of the bill, stated that SB 380 will establish an insurance regulatory account which whom the state's special revenues fund based on the operations of the insurance department. This account would funded by fees currently paid by producers of the companies to the insurance department. Currently such fees are deposited into the general fund of the state. These fees amount to about one million three hundred fifty thousand dollars each year. This has no effect on premium tax collections, which we'd think would go to the general fund. The bill would also require an amount to be appropriated that is linked to the past year's actual expenses of the insurance department. The commissioner, by rule, would adjust the amount of fees so that they would approximate the amount that would be appropriated, and the unused amount would be carried forward to the next year and would be a factor in determining the fees. The purpose of this is to ensure that the department has

Senator Williams asked about page 11, the amendment is being made to satisfy the RV people. Why was it put in there to start with.

Bud Schoen replied that they thought that all dealers were more or less the same. RV dealers are unique in that they conduct a lot of their sales off premises.

Senator Hager asked about the bond being raised from five thousand to twenty five thousand, have they thought of making a sliding bond based on the load of business.

Bud Schoen replied that they haven't, but something could be considered.

Senator Gage asked how many bonds are called on in a year.

Bud Schoen replied no more than three or four a year.

Closing by Sponsor:

Senator Tom Beck stated that he isn't sure why there was such a hold up on this bill. There is some good things in this bill that are really needed by not only auto dealers, but by the department of justice and the motor vehicle division. Senator Hager had a good idea on the volume of business.

HEARING ON SENATE BILL 360

Presentation and Opening Statement by Sponsor:

Senator Del Gage, sponsor of the bill, stated that this bill is regarding confidentiality of information of pere review. If there is information at those reviews that could be obtained outside of those reviews, those would not be subject to confidentiality.

Proponents' Testimony:

David Johnson, a CPA in Helena and also the chairman of the legislative committee of the Montana society of CPA's serving on the pier review committee in the American institute of CPA's. The pere review process which started in 1979 was voluntary for a number of years, now it is a mandatory process. The purpose of this law is to ensure that candid communications take place between the firm being interviewed and the review team. The passage of this law would facilitate this.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Thayer asked if this relieves CPA's or accountants

from liability, is it only if they are serving on a non profit board.

Senator Gage replied yes.

Senator Thayer asked Senator Gage to explain a review panel.

Senator Gage stated that periodically they will call people in because of complaints they have had for instance or maybe just as a part of a review process. To question them of some activities that they have been involved with.

Closing by Sponsor:

Senator Gage closed.

HEARING ON SENATE BILL 387

Presentation and Opening Statement by Sponsor:

Senator Gene Thayer, sponsor of the bill, stated the language on line twenty, line nine of page two of the bill, the intent was to get the renter and the leaser together before they terminate the lease, so they don't find out later that they don't get their deposit back or a very small portion of it back. He has agreed that which would have been his major amendment for the reason that their fear would be that within that forty eight hours, that person could trash that apartment. The stricken language on page two, lines 15-22 that is existing law, the bill drafter struck that, and now we need to reinstate that. The last line of that where it says the tenant has forty eight hours to complete the cleaning, the problem with that is if most leases terminate at the end of the month. If someone was knowledgeable of the law, and they take an extra two days to clean the apartment, and that's two days that these people don't have to rent the apartment. They would loose rental days. He suggested that we reinstate all of the language on line 15-22 except that last line.

Proponents' Testimony:

Tom Hopgood, representing the Montana association of realtors, stated that they are in support of the bill and the only thing that they objected to was the forty eight hour notice.

Ronda Carpenter, president of income property owners and managers, inc., stated that they support the bill as amended. Forty eight hours was a problem, and Senator Thayer has agreed to change that for them, so they support the bill.

Larry Witt, representing the Montana landlord's association, stated that they support the bill as amended.

Martin Wilke, a representing Montana landlords, stated he supports the bill as amended.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Williams asked if Senator Thayer wanted an immediate effective date.

Senator Thayer replied that he would like an immediate effective date of July 1, 1991, since school would start in August.

Closing by Sponsor:

Senator Thayer closed.

EXECUTIVE ACTION ON SENATE BILL 387

Motion:

Senator Thayer moved to amend SB 387.
Senator Noble moved to do pass SB 387 as amended.

Discussion:

None

Amendments, Discussion, and Votes:

The amendments to SB 387 passed unanimously.

Recommendation and Vote:

SB 387 do passed unanimously with amendments.

EXECUTIVE ACTION ON SENATE BILL 360

Motion:

Senator Gage moved that SB 360 do pass.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

SB 360 do passed unanimously.